

September 26, 2022

Via ECF

The Honorable Frederic Block
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: ***Blain v. State University of New York Downstate Medical Center et al.***
Case No. 22-cv-03022

Dear Judge Block:

We are writing regarding the Court's request that a representative of the National Institutes of Health ("NIH") speak with the Court to discuss ongoing issues related to this matter. For complete transparency, we have copied NIH's counsel, David Lankford, to whom we made a request to speak with the Court about Dr. Stacy Blain's removal as Principal Investigator on two NIH grants (together, the "Grants"). We have also copied Artemis Lekakis and Matthew Modafferi of the U.S. Attorney's Office for the Eastern District of New York, to whom Mr. Lankford directed us to confirm the appropriate process for the Court in a private litigation to speak with an official from a federal agency.

As Your Honor may recall, the Court held a three-day preliminary-injunction hearing about whether the State University of New York ("SUNY") caused irreparable harm to Dr. Blain by, among other harms, contacting NIH to remove Dr. Blain from the Grants. After the hearing, on July 1, 2022, the Court suggested that we contact NIH and invite an NIH representative to the proceedings. Specifically, the Court asked, "Is there anybody from NIH who is willing to come in here and talk to me?" and stated "if [an NIH representative] is willing to come to court here to help the Judge out and try to sort this all out, that would be helpful." *See* Hearing Tr. 543:25-544:1; 544:15-17.

We quickly relayed the Court's request to NIH. On July 2, 2022, we asked Mr. Lankford to come to Court or participate on a Zoom conference with the Court the following week. On July 7, 2022, Mr. Lankford informed us that NIH was looking into the process for responding to the request. On July 13, 2022, Mr. Lankford informed us that he contacted the U.S. Attorney's Office for the Eastern District of New York to confirm the appropriate process to respond to the Court's request. On August 1, 2022, Mr. Lankford informed us that he expected to have guidance shortly thereafter. On August 10, 2022—after we followed up with Mr. Lankford—he connected us with Mr. Lekakis and Mr. Modafferi to further discuss the appropriate procedure to respond to the Court's request. Since then, we have diligently attempted to speak with Mr. Lekakis and Mr. Modafferi. On August 11, 2022, we attempted to schedule a call to discuss the process, but Mr. Lekakis informed us that he was unavailable until August 25, 2022. On August 25, 2022, and,

after receiving no response, September 12, 2022, we again attempted to schedule a call to discuss the appropriate process.

On September 12, 2022, Mr. Lekakis finally provided a substantive response: that “non-party NIH’s position has been set forth in the letters and or other documents sent to defendant and that have been exchanged between the parties to date,” and so Mr. Lekakis would “facilitate any request received directly from the Court to discuss this matter with an NIH representative.” Accordingly, our understanding of Mr. Lekakis’s position is that NIH would need to receive a request directly from the Court to move forward with the Court’s request. We again attempted to schedule a phone call to discuss Mr. Lekakis’s position, but were again told that he would be unavailable for over one week.

For these reasons, we have been unsuccessful in our attempts to bring an NIH representative to discuss their removal of Dr. Blain from the Grants as it relates to her claims of discrimination against SUNY and the irreparable harm she has suffered as a result of the discrimination.

Respectfully submitted,

/s/ Jim Walden

Jim Walden
Attorney for Plaintiff Dr. Stacy Blain

cc: Clement J. Colucci (via ECF and email)
Alissa Wright (via email)

David Lankford (via email)

Artemis Lekakis (via email)
Matthew Modafferi (via email)